No. 17-965

In The
Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Petitioners,

v.

STATE OF HAWAII, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* CIVIL RIGHTS ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*

Amici, National Association for the Advancement of Colored People, Advocates for Youth, Bend the Arc: A Jewish Partnership for Justice, Center for Reproductive Rights, Chicago Lawyers' Committee for Civil Rights Under Law, Judge David L. Bazelon Center for Mental Health Law, Lambda Legal Defense and Education Fund, Mississippi Center for Justice, National Center for Lesbian Rights, National Urban League, People for the American Way Foundation, Southern Coalition for Social Justice, Southern Poverty Law Center, and Washington Lawyers' Committee for Civil Rights and Urban Affairs, are national and regional civil rights groups interested in the promotion of civil liberties throughout the country, and the elimination of discrimination in any form.[1]

1. The National Association for the Advancement of Colored People (NAACP) is the nation's largest and oldest civil rights grassroots organization. Since its founding in 1909, the mission of the NAACP has been to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination. The NAACP has fought in the courts for decades to protect the guarantee of equal

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[1] *Amici* submit this brief pursuant to Sup. Ct. R. 37.3(a); all parties have consented to its filing. Pursuant to Sup. Ct. R. 37.6, *Amici* submit that no counsel for any party participated in the authoring of this document, in whole or in part; no party or party's counsel contributed any money that was intended to fund preparation or submission of the brief; and no person, other than *Amici Curiae*, their members and their counsel, contributed money that was intended to fund preparation or submission of the brief.

protection under law. To advance its mission, the NAACP has represented parties in landmark civil rights cases, perhaps most famously in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), which outlawed segregation in public schools. The NAACP also has filed numerous *amicus* briefs over its decades of existence in cases that significantly impact minority groups.

2. The Advocates for Youth (Advocates) is a non-profit organization that helps young people make informed and responsible decisions about their reproductive and sexual health. For more than three decades, Advocates has partnered with youth leaders, adult allies, and youth-serving organizations to advocate for effective adolescent reproductive and sexual health programs and policies. In 2017, Advocates launched the Muslim youth Leadership Council (MyLC). MyLC is a yearlong Leadership Council dedicated to bringing together young Muslim-identifying people in the United States and furthering their goals of becoming leaders within their communities and beyond. Each year MyLC recruits and trains 15-20 young people who advocate for the inclusion of young Muslim-identifying people in the planning, implementation, and evaluation of Reproductive Justice related programming and policies at the local, state, and federal levels.

3. Bend the Arc: A Jewish Partnership for Justice is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional

boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive advocacy.

4. The Center for Reproductive Rights (CRR) is a global human rights organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In the United States, CRR's work focuses on ensuring that all people have access to a full range of high-quality reproductive health care. Since its founding in 1992, CRR has been actively involved in nearly all major litigation in the U.S. concerning reproductive rights, in both state and federal courts, including most recently, serving as lead counsel for the plaintiffs in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). As a rights-based organization, the Center has a vital interest in protecting individuals who endeavor to exercise their fundamental rights free from unwarranted government intrusion and discrimination. CRR's ability to bring litigation challenging executive and regulatory action, and to seek relief where individuals are threatened with irreparable harm, is crucial to its mission.

5. The Chicago Lawyers' Committee for Civil Rights (CLCCR) is a non-profit public interest law organization founded in 1969. CLCCR works to secure racial equity and economic opportunity for all. CLCCR provides legal representation through partnerships with the private bar, and collaborates with grassroots organizations and other advocacy groups to implement community-based solutions that advance civil rights.

In all practice areas, including education equity, fair housing, economic opportunity, hate crime prevention, and voting rights, CLCCR advocates for immigrants who have been subject to racially-discriminatory governmental practices and policies. CLCCR's goal is to ensure that America fulfills its promise of democracy and equal justice for all.

6. The Judge David L. Bazelon Center for Mental Health Law is a national public interest organization founded in 1972 to advance the rights of individuals with mental disabilities. The Bazelon Center advocates for laws and policies that provide people with mental illness or intellectual disabilities the opportunities and resources they need to participate fully in their communities. Its litigation and policy advocacy is based on the Americans with Disabilities Act's guarantees of non-discrimination and reasonable accommodation. People with mental illness or intellectual disability commonly face discrimination based on myths and stereotypes, and the eradication of such discrimination is among the Bazelon Center's primary goals.

7. Lambda Legal Defense and Education Fund is a national impact-litigation, public-policy, and advocacy organization committed to achieving full recognition of the civil rights of those who are lesbian, gay, bisexual, or transgender or living with HIV – including many who are Muslim and face increased discrimination because of the challenged Executive Order. Through its decades of work on behalf of historically persecuted people, Lambda Legal has deep knowledge

of the corrosive effect of government measures that single out marginalized groups for mistreatment. Lambda Legal has also worked to vindicate protections afforded by the Establishment Clause to those treated unequally based on religious beliefs and affiliations, and has a long-standing interest in access to immigration and asylum for individuals who are LGBT or living with HIV. Lambda Legal has participated as counsel or amicus curiae in the Supreme Court and lower courts in numerous cases addressing First Amendment, Equal Protection, and other civil-rights bulwarks for LGBT people. For example, Lambda Legal has served as party counsel in *Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and participated as an amicus in asylum cases such as *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000) and *Velasquez-Banegas v. Lynch*, 846 F.3d 258 (7th Cir. 2017).

8. The Mississippi Center for Justice (MCJ) is a non-profit public interest law organization founded in 2003 in Jackson, Mississippi and committed to advancing racial and economic justice. Supported and staffed by attorneys and other professionals, the Center develops and pursues strategies to combat discrimination and poverty statewide. One of amicus' original areas of interest involved predatory loan practices directed at migrant poultry workers, and MCJ has remained concerned about the plight of Mississippi's growing immigrant population for the last decade, particularly in the

areas of access to healthcare, education, housing, and fair lending.

9. The National Center for Lesbian Rights (NCLR) is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in combating discrimination and securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in protecting the rights of LGBT immigrants and other immigrants to this country. Since 1994, NCLR's Immigration Project has provided free legal assistance to thousands of LGBT immigrants nationwide through, among other services, direct representation of immigrants in impact cases and individual asylum cases and advocacy for immigration and asylum policy reform.

10. The National Urban League is a civil rights organization dedicated to the empowerment of African Americans to achieve economic parity and racial equality. Founded in 1910 and headquartered in New York City, the League improves the lives of more than two million people annually across the nation through direct service programs, including education, employment training and placement, housing, and health. The League seeks to ensure our civil rights by actively working to eradicate all barriers to equal participation

in all aspects of American society, whether political, economic, social, educational, or cultural.

11. People For the American Way Foundation (PFAWF) is a nonpartisan civic organization established to promote and protect civil and constitutional rights, including religious liberty and freedom from discrimination. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values. PFAWF strongly supports the principles that it violates the First Amendment and civil rights precepts for the government to take action that, effectively or on its face, harms one particular religious group. This is especially important because of the additional harm such government opprobrium can and has caused, and with respect to particularly vulnerable populations like immigrants, as in this case.

12. The Southern Coalition for Social Justice (SCSJ) is a non-profit public interest law organization founded in 2007 in Durham, North Carolina. SCSJ partners with communities of color and economically disadvantaged communities in the South to advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications. Originally, one of amicus' primary practice areas was immigrants' rights, which remains important to its mission. SCSJ frequently advocates on behalf of immigrants who have been subject to racially-discriminatory governmental practices,

and promotes the application of basic human rights principles to policies affecting migrant communities.

13. The Southern Poverty Law Center (SPLC) has provided pro bono civil-rights representation to low-income persons in the Southeast since 1971. SPLC has litigated numerous cases to enforce the civil rights of immigrants and refugees to ensure that they are treated with dignity and fairness. SPLC also monitors and exposes extremists who attack or malign groups of people based on their immutable characteristics. SPLC is dedicated to reducing prejudice and improving intergroup relations. SPLC has a strong interest in opposing discriminatory governmental action that undermines the promise of civil rights for all.

14. The Washington Lawyers' Committee for Civil Rights and Urban Affairs is a non-profit civil rights organization established to eradicate discrimination and poverty by enforcing civil rights laws through litigation. In furtherance of this mission, the Washington Lawyers' Committee has a dedicated Immigrant Rights Project, which has served as a critical resource for some of the most vulnerable populations in the Washington, D.C. area: newcomers and non-English speakers, who are often discriminated against on the basis of their religious background or national origin, and who are often unaware of their legal rights and protections.

SUMMARY OF ARGUMENT

In promotion of their interests, *Amici* respectfully submit this brief to advance a key argument in support of affirming the lower courts' rulings granting the plaintiffs' request for injunctive relief. *Amici* submit that the balance of equities and public interest weigh heavily in favor of enjoining President Trump's September 24, 2017 Executive Order, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats" (the "Executive Order"), because it improperly promotes social categorization and stereotyping that endangers the lives and well-being of individuals of the Muslim faith. The Executive Order is the product of several centuries of Muslim stereotyping in this country, and harms even those who are not the direct victims of specific attacks on immigrants. Here, the evidence demonstrates that, regardless of the Government's *post-hoc* explanations, the Executive Order was motivated by animus toward Muslims and improperly singled out, as a proxy, those born in the targeted majority-Muslim countries.

ARGUMENT

Social Categorization and Stereotyping Create Dangerous Conditions for Members of Minority Groups.

A. Stereotyping Minorities Creates a Climate for Discrimination.

The balance of equities and public interest in this case weigh in favor of enjoining the Executive Order due to the discrimination it promotes. As the courts have long recognized, laws such as the Executive Order improperly promote social categorization and stereotyping of Muslims that lead to the endangerment of the lives of those who practice Islam, a minority religion.

The Court has repeatedly stated that discriminatory stereotypes can improperly affect decision making. Most recently, the Court recognized that disparate impact liability helps prevent segregated housing patterns that might otherwise result from the role of "covert and illicit stereotyping." *Texas Dep't of Hous. & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2522 (2015); *see also Miller-El v. Dretke*, 545 U.S. 231, 268 (2005) (Breyer, J., concurring) (recognizing that "subtle forms of bias are automatic, unconscious, and unintentional and escape notice, even the notice of those enacting the bias").

In *Price Waterhouse*, the Court recognized the role that stereotyping plays in discrimination cases, explaining that "stereotyped remarks can certainly be evidence that gender played a part" in an adverse

employment decision. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989), *superseded by statute on other grounds*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1075.

In *Windsor*, the Court emphasized that laws whose "purpose and effect" is "disapproval of . . . [a] class" of people "impose a disadvantage, a separate status, and so a stigma" on the targeted group. *United States v. Windsor*, 570 U.S. 744, 770 (2013). The law at issue in that case, the federal Defense of Marriage Act, targeted same-sex couples for discrimination and stigma, just as the challenged Executive Order today singles out Muslim individuals for ill-treatment.

Similarly, in *Cleburne*, the Court explained that "race, alienage, and national origin" are "so seldom relevant" to state interests that "such considerations are deemed to reflect prejudice and antipathy – a view that those in the burdened class are not as worthy or deserving as others." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

The circuit courts also recognize that social categorization and stereotyping create fertile grounds for discrimination, including in housing and employment decisions, and in police actions. *See, e.g.*, *Hassan v. City of New York*, 804 F.3d 277, 306 (3d Cir. 2015) (rejecting "appeals to 'common sense' which might be infected by stereotypes" as insufficient to justify police surveillance of Muslim individuals, businesses, and institutions) (quoting *Reynolds v. Chicago*, 296 F.3d 524, 526 (7th Cir. 2002)); *Ahmed v. Johnson*, 752 F.3d 490, 503

(1st Cir. 2014) (finding "lack of explicitly discriminatory behaviors" does not preclude a finding of "unlawful animus" in employment discrimination because "unlawful discrimination can stem from stereotypes and other types of cognitive biases, as well as from conscious animus"); *United States v. Stephens*, 421 F.3d 503, 515 (7th Cir. 2005) (recognizing that racial stereotyping continues to play a role in jury selection and the outcome of trials); *Thomas v. Eastman Kodak Co.*, 183 F.3d 38, 42 (1st Cir. 1999) (holding that Title VII's ban on "disparate treatment because of race" includes "acts based on conscious racial animus" and "employer decisions that are based on stereotyped thinking").

Relevant research shows that a psychological triggering phenomenon known as "priming" exacerbates stereotyping. Priming occurs when "subtle influences . . . increase the ease with which certain information comes to mind." Richard H. Thaler & Cass R. Sunstein, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 69 (2008). For racial stereotyping, which shares many attributes with stereotyping of Muslims, priming an individual with race-based stereotypes can influence the individual's later decisions. Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes about Adolescent Offenders*, 28 L. & HUM. BEHAV. 483, 489 (2004).

Social science research repeatedly demonstrates that individuals have a persistent tendency to defer blindly to priming from authority figures. *See* Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL & SOC. PSYCHOL. 371, 375-76 (1963). Therefore, as

the Court's decisions in *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493-94 (1954) and *Loving v. Virginia*, 388 U.S. 1, 8-12 (1967), demonstrate, discrimination with the sanction of law raises unique and particular dangers.

B. The Executive Order Is the Product of Centuries of Discriminatory Stereotypes About Muslims.

This country has had a long history of official stereotyping of Muslims as un-American and unworthy of becoming Americans. During the Colonial era, two of the most outspoken public figures who disseminated stereotypes of Muslims (then called "Mahometans") were Cotton Mather and Aaron Burr – they consistently referred to "Mahometans" in highly derogatory terms, including denouncing "that false Prophet and great Imposter Mahomet."[2]

Even after this country became independent, prejudice against Muslims, as expressed through consistent stereotyping, continued throughout the nineteenth century and into the twentieth century.[3] For example,

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[2] Thomas S. Kidd, AMERICAN CHRISTIANS AND ISLAM: EVANGELICAL CULTURE AND MUSLIMS FROM THE COLONIAL PERIOD TO THE AGE OF TERRORISM 12 (2009); Thomas S. Kidd, *"Is It Worse to Follow Mahomet than the Devil?" Early American Uses of Islam*, 72 CHURCH HISTORY 766, 771-73, 779-80 (2003).

[3] *See, e.g.*, Erik Love, ISLAMOPHOBIA AND RACISM IN AMERICA 41, 86-89 (2017); Jeffrey L. Thomas, SCAPEGOATING ISLAM: INTOLERANCE, SECURITY, AND THE AMERICAN MUSLIM 1-14 (2015); Peter Gottschalk & Gabriel Greenberg, *Common Heritage, Uncommon Fear: Islamophobia in the United States and British India,*

in discussing immigration legislation in 1910, Representative Burnett of Alabama repeatedly referred to "Syrians," then a catch-all term for Middle Eastern immigrants who were Muslims, in derogatory terms. He made clear that he and his colleagues viewed those immigrants as "the dirty Syrian[s] of today," and among "the least desirable" aliens, because "the Syrians are the same way, mixed up with the Arabians and the people of African and western Asiatic countries, until they are not our kind of people; and they are not the kind of people from which those who settled this country sprang."[4]

In 1924, when Congress was debating immigration legislation that led to highly restrictive quotas, some legislators similarly made racist remarks and relied on stereotypes about minority immigrants.[5] As set forth in Section C, *infra*, these are the same kind of statements recently made about Muslims.

In this century, the stereotyping of Muslims has continued unabated and has even increased, leading to escalating discrimination against Muslims, rising to the level of violence. Even prior to the Executive

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1687-1947, *in* ISLAMOPHOBIA IN AMERICA: THE ANATOMY OF INTOLERANCE (Carl W. Ernst ed. 2013); Robert J. Allison, THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD 1776-1815 (1995).

[4] HEARINGS BEFORE THE H. COMM. ON IMMIGRATION AND NATURALIZATION, 61st Cong. 383, 386, 393, 396 (1910) (statement of Rep. John L. Burnett, Alabama).

[5] Vivian Yee, *Trump's Jabs Echo Attitudes from the '20s*, N.Y. TIMES, Jan. 14, 2018, at A-1, A-22.

Orders in 2017, commentators documented and denounced the ongoing stereotyping of Muslims and the ensuing discrimination and violence.

Professor Barbara Perry, a prominent criminologist and sociologist at the University of Ontario, recognized that "many commentators have suggested that Arabs generally and Muslims specifically may represent the last 'legitimate' subjects of slanderous imagery and stereotypes." Barbara Perry, *Anti-Muslim Violence in the Post-9/11 Era: Motive Forces*, 4 HATE CRIMES 172, 176 (Barbara Perry & Randy Blazak, eds. 2009). Political leaders have an outsized impact in fostering this stereotyping and its ensuing discrimination and violence: "Even more powerful in providing justifications for anti-Muslim violence is the explicit exploitation of public images and related fears by political leaders. To the extent that this is so, there emerges a climate that bestows 'permission to hate.'" *Id.* at 181. Thus, she concluded that:

> [S]tate practices provide a context and a framework for the broader demonization and marginalization of minority groups. Through its rhetoric and policies, the state absorbs and reflects back onto the public hostile and negative perceptions of the Other – in this case, Muslims. Public expressions of racism by state actors are constituted of and by public sentiments of intolerance, dislike, or suspicion of particular groups. **Thus, the state seems to reaffirm the legitimacy of such**

> **beliefs, while at the same time giving them public voice.**

Id. at 185 (emphasis added).

Professor Sahar Aziz of the Rutgers University Law School, who testified to Congress on this issue, wrote: "In the United States, numerous polls show a rise in anti-Muslim bias that is manifesting into tangible hate crimes, mosque vandalism, employment discrimination, and bullying of Muslim kids in schools." Sahar F. Aziz, *Losing the "War of Ideas": A Critique of Countering Violent Extremism Programs*, 52 TEXAS INT'L L.J. 255, 265 (2017).

Professor Sheryll Cashin of the Georgetown University Law Center wrote that: "Explicit, public anti-Muslim comments do not appear to engender similar widespread outrage" as do racist remarks, and instead "appear to be on the rise," because of the lack of public rejection of such views. Sheryll Cashin, *To Be Muslim or Muslim-Looking in America: A Comparative Exploration of Racial and Religious Prejudice in the 21st Century*, 2 DUKE FORUM L. & SOC. CHANGE 125, 127-28 (2010). "In the wake of the 9/11 attacks, it is more socially acceptable to express explicit bias against Arabs or Muslims than against blacks or other racial/ethnic groups." *Id.* at 132.

Muslim stereotyping has manifested in the form of violence against Muslims, or even those who are erroneously perceived as being Muslims, such as Sikhs. A recent study documented that hate incidents in this country "against those who identify or are perceived as

South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab" have increased by two-thirds from the twelve months preceding the election (130 incidents from Nov. 1, 2015 to Nov. 7, 2016) to the twelve months after the election (213 incidents from Nov. 8, 2016 to Nov. 7, 2017).[6] Although the serious under-reporting of such crimes causes the available statistics to understate the actual prevalence of such violence,[7] it is well-documented throughout 2016,[8] and continuing as far as data is available. Indeed, the FBI itself does not report "the hate crimes it investigates to its own database."[9]

Thus, from Colonial times to the present, this country had a long and deliberate political tradition of officially stereotyping Muslims, which created an atmosphere that legitimizes and encourages discrimination and violence against Muslims.

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[6] *See* South Asian Americans Leading Together, COMMUNITIES ON FIRE: CONFRONTING HATE VIOLENCE AND XENOPHOBIC POLITICAL RHETORIC 9 (2018), http://saalt.org/wp-content/uploads/2018/01/Communities-on-Fire.pdf.

[7] Todd H. Green, THE FEAR OF ISLAM: AN INTRODUCTION TO ISLAMOPHOBIA IN THE WEST 282-84 (2015) (discussing statistics on crimes against Muslims and problems with underreporting); *see generally* U.S. Dep't of Justice, Bureau of Justice Statistics, Special Report, HATE CRIME VICTIMIZATION, 2004-2015 (2017) (noting problems with underreporting and different methodologies for categorizing these crimes); U.S. Dep't of Justice, Bureau of Justice Statistics, Special Report, HATE CRIMES REPORTED BY VICTIMS AND POLICE (2005) (same).

[8] Aziz, 52 TEXAS INT'L L.J., at 266-68 & nn.65-80 (collecting recent examples of violence against Muslims).

[9] *See* COMMUNITIES ON FIRE, *supra* note 6, at 13 & n.23.

C. The Executive Order Is Based on Stereotypes About Muslims as "Anti-American" and "Terrorists."

As in the cases cited above, the Muslim ban bears the imprimatur of the Executive Branch and engenders precisely the discriminatory harms that the Court has held cannot withstand constitutional muster. Since December 7, 2015, when then-candidate Trump issued a written statement calling for a "total and complete shutdown on Muslims entering the United States" in the wake of the attack in San Bernardino, California, a "Muslim ban" has been a major item on his policy agenda. J.A. 158; *see also* J.A. 162.[10] At that time, his campaign characterized a bar on Muslim entry into the United States as a way to stop residents of this country from being the "victims of the horrendous attacks by people that believe only in Jihad." J.A. 158. He did so with no apparent evidence other than extensive stereotyping.[11]

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[10] Similarly, stereotyped statements about Chinese immigrants were made by both political parties and by candidates in the Presidential elections in the 1870s and 1880s. *See* Polly J. Price, "A 'Chinese Wall' at the Nation's Borders: Justice Stephen Field and *The Chinese Exclusion Case*," 43 J. SUP. CT. HIST. 7, 11 & n.28, 12 & nn.35-36 (2018). The Court's decision upholding the ban on Chinese immigration reflected stereotypes about the Chinese. *Id.* at 13 & nn.49-51; *Chae Chan Ping v. United States* (*The Chinese Exclusion Case*), 130 U.S. 581, 595 (1889).

[11] *See generally Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 266 n.15 (4th Cir. 2018) (*en banc*) (listing campaign statements), *petition for cert. filed*, No. 17-1194 (Feb. 23, 2018); *see also* Christine Wang, "Trump Website Takes Down Muslim Ban Statement After Reporter Grills Spicer in Briefing," CNBC.COM

Mr. Trump's labeling of Muslims as "terrorists" has been relentless. On January 4, 2016, the Trump campaign premiered its first television advertisement, in which he "call[ed] for a total and complete shutdown of Muslims entering the United States" until doubts about "radical Islamic terrorism" can be "figure[d] out."[12] The link he drew between "radical Islamic terrorism" and all individual Muslims entering the United States was stated with no supporting evidence. Subsequently, candidate Trump, in a major foreign policy speech on April 27, 2016, stated that: "The struggle against radical Islam also takes place in our homeland. . . . We must stop importing extremism through senseless immigration policies."[13] He made these statements, relying entirely on stereotypes, and presenting no evidence or facts to support these claims.[14] A

(May 8, 2017), https://www.cnbc.com/2017/05/08/trump-website-takes-down-muslim-ban-statement-after-reporter-grills-spicer-in-briefing.html.

[12] Jeremy Diamond, *Donald Trump: Ban all Muslim Travel to United States*, CNN POLITICS (Dec. 8, 2015), http://edition.cnn.com/2015/12/07/politics/donald-trump-muslim-ban-immigration; *see also* Jill Colvin and Steve Peoples, "Trump's First TV Ad Pushes Proposal to Ban Muslims from Entering U.S.," *The Globe and Mail (Toronto)*, Jan. 5, 2016, at A-9.

[13] N.Y. TIMES, *Transcript: Donald Trump's Foreign Policy Speech* (April 27, 2016), https://www.nytimes.com/2016/04/28/us/politics/transcript-trump-foreign-policy.html.

[14] Although President Trump has publicly labeled Muslims as dangerous "terrorists," he has failed to condemn the hate crimes perpetuated *against* them over the past year. *See, e.g.*, Jack Moore, *Trump's Failure to Condemn Minnesota Mosque Attacks Stirs Social Media Anger*, NEWSWEEK (Aug. 17, 2017), http://www.newsweek.com/trump-failure-condemn-minnesota-mosque-attack-stirs-social-media-anger-647694 (President Trump's silence following

number of other federal, state, and local elected officials and candidates similarly made stereotyped statements about Muslims during campaigns or while in office.[15]

As a matter of law, the Court can rely on campaign statements as part of its analysis of whether the Executive Orders reflect illegal stereotyping and bias against Muslims. For example, the Second Circuit held that campaign statements by the successful candidate for Mayor of Yonkers – in which he "promised . . . to impose a moratorium on all subsidized housing in Yonkers" – was evidence of the "intent to preserve the existing racial imbalance" in that city. *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1191, 1222 (2d Cir. 1987). Similarly, the Eleventh Circuit held that campaign promises by Roy Moore, made while running for the position of Chief Justice of the Alabama Supreme Court, *i.e.*, that he would install the Ten Commandments monument inside the courthouse, could be used as evidence of his intent to violate the Establishment Clause. *Glassroth v. Moore*, 335 F.3d 1282, 1285-87, 1292 (11th Cir. 2003).

More generally, "the historical background of the decision [to discriminate] is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes." *Arlington Heights v.*

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a January 2017 shooting at a Quebec mosque, June 2017 attacks in Virginia and London, and an August 2017 bomb attack at a mosque in Minnesota).

[15] *See* COMMUNITIES ON FIRE, *supra* note 6, at 21 & App. B, at 60-71 (collecting statements).

Metropolitan Housing Devel. Corp., 429 U.S. 252, 267 (1977) (citations omitted).

Here, as in *Yonkers*, *Glassroth*, and *Arlington Heights*, evidence of candidate-Trump's campaign statements and campaign promises is probative evidence of the intent to discriminate against Muslims – an intent that was implemented just one week after the Inauguration, when he issued the first of a series of Executive Orders that all shared the same goal of fulfilling his campaign pledge.

On January 27, 2017, only one week after the Inauguration, President Trump signed Executive Order 13,769, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." 82 FED. REG. 8977 (Feb. 1, 2017). Among other immigration restrictions, Executive Order 13,769 temporarily banned all nationals from seven majority-Muslim countries from entering the United States: Iran, Iraq, Syria, Sudan, Yemen, Libya, and Somalia. Rudy Giuliani, an advisor to the President and former Mayor of New York City, "stated that President Trump told him that he wanted a 'Muslim ban,'" and directed him to figure out how to do it. J.A. 167-168; J.A. 228-229; *see also Int'l Refugee Assistance Project*, 883 F.3d at 251, 266.

While surrogates of the Administration pushed back at the characterization of Executive Order 13,769 as a "Muslim ban," the President embraced it. He told the public via Twitter, "[c]all it what you want, it is about keeping bad people (with bad intentions) out of

[the] country!"[16] As the Government has admitted to the lower courts, the President's tweets are official statements.[17] Throughout his campaign, and now in office, President Trump has consistently labeled Muslims as "bad people" who must be kept out of America in the interest of national security.

After multiple lower courts enjoined enforcement of E.O. 13,769,[18] the Administration announced plans to revise the order. On March 6, 2017, the Administration issued Executive Order 13,780, "Protecting the Nation from Foreign Terrorist Entry into the United States." 82 FED. REG. 13,209 (Mar. 9, 2017). The revised

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[16] Jane Onyanga-Omara, *British PM Criticizes Trump's Travel Ban; Theresa May Calls Controversial Move "Divisive and Wrong,"* USA TODAY, Feb. 2, 2017, at 5A.

[17] *Int'l Refugee Assistance Project*, 833 F.3d at 251 ("then-White House Press Secretary Spicer explained that President Trump's tweets are 'official statements by the President of the United States' "); *id.* at 346 (Keenan, J., concurring) ("The Government acknowledges that the President's tweets, for example, constitute 'official' statements of the President."). The Department of Justice also told a district court in unrelated FOIA litigation that Trump's tweets are "official statements of the President of the United States," since "a tweet can be the equivalent of a public statement or speech." *James Madison Project v. Dep't of Justice*, No. 1:17-cv-00144, Def. Supp. Mem., at 2, 5-6 & n.4 (ECF No. 29) (D.D.C. Nov. 13, 2017).

[18] *Washington v. Trump*, No. 2:17-cv-141, Temporary Restraining Order, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), *motion for stay denied*, 847 F.3d 1151 (9th Cir. 2017); *Tootkaboni v. Trump*, No. 1:17-cv-10154, Temporary Restraining Order, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Darweesh v. Trump*, No. 1:17-cv-480, Temporary Restraining Order, 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017); *Aziz v. Trump*, 234 F. Supp. 3d 724 (E.D. Va. 2017) (preliminary injunction).

Order preserved several core provisions of the prior Order: it suspended the United States Refugee Admissions Program for 120 days, and it suspended the entry into the United States of nationals of six of the seven majority-Muslim countries designated in E.O. 13,769 for 90 days. *See* E.O. 13,780, §§ 6(a); 2(c). As did E.O. 13,769, the revised Order targeted only majority-Muslim countries, as proxies for all Muslims. The Fourth Circuit upheld the district court's decision enjoining the revised Order. *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017) (*en banc*). The Court vacated that decision as moot due to the expiration of the second Executive Order. *Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 353 (2017).

President Trump then issued the third iteration of the Executive Order on September 24, 2017. *See* Proclamation 9645, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," 82 FED. REG. 45,161 (Sept. 27, 2017). Although that order purported to expand its scope into non-Muslim countries by including North Korea and Venezuela, this country has hardly any visitors from North Korea, and the order as to Venezuela was limited to certain high-level officials. *Id.* While the Administration recently issued a report asserting that the majority of terrorism convictions were of foreign-born individuals, that report was based on flawed statistical

analyses, including undercounting many incidents of domestic terrorism.[19]

The third version of the Executive Order continues to target Muslims. The Fourth Circuit recently rejected the Government's argument that "the inclusion of those two non-Muslim majority countries," North Korea and Venezuela, "underscores a religion-neutral purpose." *Int'l Refugee Assistance Project*, 883 F.3d at 268. Instead, "a reasonable observer could hardly 'swallow the claim' that the addition of North Korea and Venezuela to the twice-enjoined travel ban was anything more than an attempt to 'cast off' the 'unmistakable' religious objective of the earlier executive orders." *Id.* (quoting *McCreary County v. Amer. Civil Liberties Union of Kentucky*, 545 U.S. 844, 871-72 (2005)).

Supporting that conclusion, "approximately 80 percent of all the Muslim refugees who resettled in the United States over the past two years were from the targeted countries."[20] Indeed, "of the refugees who

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[19] Dep't of Homeland Security and Dep't of Justice, EXECUTIVE ORDER 13780: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES, INITIAL SECTION 11 REPORT (Jan. 16, 2018), https://www.justice.gov/opa/press-release/file/1026436/download; *see also* Devlin Barrett, *As U.S. Agencies Link Terrorism and Immigration, Expert Sees Fuzzy Math*, WASH. POST, Jan. 17, 2018, at A-10.

[20] Dalia Lithwick & Jeremy Stahl, *Sneak Attack: Trump Is Trying to Secretly Push Through Another Muslim Ban*, SLATE, JURISPRUDENCE (Nov. 10, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/11/trump_is_trying_to_secretly_sneak_through_another_muslim_ban.html.

came to the U.S. over the last two years from all of the other countries . . . approximately 70 percent were Christian and just 16 percent were Muslim." *Id.*

The government's intent to ban Muslims will exacerbate widespread discrimination that Muslims already face. The official action of marking a group, Muslims, as a dangerous "fifth column," drives societal biases against them and creates conditions where violence against them is seen as more acceptable because they are perceived, in President Trump's words, to be "bad people."

In 2011, the Pew Research Center surveyed Western cultures to determine which characteristics Westerners associate with people in the Muslim world. That survey found that about half of the respondents characterized Muslims as "violent," and more than half characterized Muslims as "fanatical."[21]

Thus, it is no surprise that the Pew Research Center's 2017 survey of Muslims in this country found that discrimination against them was increasing, and that Muslims are even more concerned in light of the President's Executive Orders.[22]

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[21] Pew Research Center, Global Attitudes Project, *Muslim-Western Tensions Persist* (July 21, 2011), http://www.pewglobal.org/2011/07/21/muslim-western-tensions-persist/#.

[22] Pew Research Center, *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream* (July 26, 2017), http://www.pewforum.org/2017/07/26/findings-from-pew-research-centers-2017-survey-of-us-muslims/; *see also* Abigail

In a recent news analysis discussing ongoing social science research relating to stereotyping against the most recent Muslim immigrants in this country and Canada, *Science* magazine recognized that: "Prejudice of course can be directed against any group by any other. But immigrants, and even more so refugees and asylum seekers, may be especially vulnerable because of their tenuous place in a larger society." Jennifer Couzin-Frankel, *Battling Bias: How Can We Blunt Prejudice Against Immigrants?*, 350 SCIENCE 687, 688 (May 19, 2017). This applies with even greater force to child immigrants and refugees, who are even more vulnerable than their parents. (The recent escalation of deportation orders similarly harms child immigrants and refugees.)

Recent social science research demonstrates both the already-existing climate of prejudice against Muslims and Arabs and the unconscious nature of that bias. "Non-Arab and non-Muslim test takers manifested strong implicit bias against Muslims. These results are in sharp contrast to self-reported attitudes." Carol Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASH. U. J. L. & POL. 71, 93 (2010). A "sample of U.S. citizens on average viewed Muslims and Arabs as not sharing their interests and stereotyped them as not especially sincere, honest, friendly, or warm." Susan T. Fiske, et al., *Policy Forum: Why*

Hauslohner, *Anti-Muslim Discrimination on Rise in U.S., Study Finds*, WASH. POST, July 26, 2017, at A-3.

Ordinary People Torture Enemy Prisoners, 206 SCIENCE 1482-83 (Nov. 26, 2004).

D. Government Legitimization of Muslim Stereotypes Has Encouraged Violence Against Muslims, and Inhibited Millions of Muslims in the Practice of Their Religion.

There can be no doubt that, given its origin and history, the Executive Order is based on the social categorization of Muslims as "anti-American," "terrorists," those with "hatred for Americans," and "bad people." Here, President Trump's repeated, unsubstantiated claims that Muslims are dangerous, and should be barred from entering the country, are just the cue needed to release otherwise suppressed and legally prohibited violence against Muslims. The President's deliberate stereotyping of Muslims as "dangerous" and "terrorists," and his ban on their immigration, places an official imprimatur on those stereotypes, magnifying their effect.

The Court, in *Cleburne*, held that a city council's insistence that a group home for individuals with intellectual disabilities obtain a special-use permit to operate was premised on unsubstantiated "negative attitudes or fears" of nearby property owners, which were impermissible bases for disparate treatment. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). Although "'[p]rivate biases may be outside the reach of the law . . . the law cannot, directly or indirectly, give them effect.'" *Id.* (quoting *Palmore v.*

Sidoti, 466 U.S. 429, 433 (1984)). Here, too, the law cannot give effect to private biases against Muslims.

1. Government Stereotyping Leads to Violence and Discrimination.

When someone in a position of authority, as is President Trump, categorizes Muslims as dangerous and as terrorists, he communicates that they are "outsiders" and not full members of the political community. By way of illustration, the Court found unconstitutional a school-sponsored religious message, delivered over the school's public address system, by a speaker representing the student body, under the supervision of the faculty, and pursuant to a school policy. *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290, 309-10 (2000). The Court's reasoning was based on its view that the school policy created two classes of people – those who adhered to the favored religion, and those who did not. *Id.*

The President's steadfast support of what he calls a "Muslim ban" similarly sends the message that those who adhere to Islam are *not* part of American society, as opposed to Christians and other non-Muslims, who are favored by the ban. In doing so, he "sends a message to non-adherents [to the Christian faith] that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring); *see also Lawrence v. Texas*,

539 U.S. 558, 575 (2003) ("When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination in both the public and in the private spheres.").

The Court's Establishment Clause jurisprudence explicitly recognizes that how people perceive the context and effect of an official action involving religion is relevant to whether it violates the Constitution. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) ("First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.") (internal citations and quotation omitted). As the Fourth Circuit wrote, "an objective observer could conclude that the President's repeated statements convey the primary purpose of the Proclamation – to exclude Muslims from the United States." *Int'l Refugee Assistance Project*, 883 F.3d at 268.

The Executive Order and the President's statements characterize Muslims as homogenous and a national threat and thereby engender a climate conducive to violence against Muslims.

2. The President's Statements Have Encouraged Violence.

This Administration tolerated, if not encouraged, crimes against Muslims, through its determination to

implement the travel ban affecting them – in effect telling all Muslims (whether born here or abroad) – that they do not belong here. Just over 20 percent of the 213 hate violence incidents in the twelve months after the 2016 election "referenced President Trump, a Trump policy, or a Trump campaign slogan."[23]

In February 2016, only two months after candidate Trump's December 7, 2015 and January 4, 2016 statements (*supra*), three nationalists in Kansas (the "Crusaders," a militia group) engaged in a conspiracy to use weapons of mass destruction "to carry out a violent attack against Muslims in their community" through "destroy[ing] an apartment complex in Garden City, Kansas, which contains a mosque and is home to many Muslims."[24] They openly discussed going to apartments known to house refugees to "start kicking in the doors of the Somali apartments, and kill them one by one," and then expanded their target to include "city/county commission meetings, local public officials, landlords who rent property to Muslim refugees, and organizations providing assistance to Muslim refugees," since "the only good Muslim is a dead Muslim."[25]

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[23] *See* COMMUNITIES ON FIRE, *supra* note 6, at 10.

[24] *United States v. Allen, et al.*, No. 6:16-cr-10141, Criminal Complaint, at ¶¶ 2, 9 (ECF No. 1) (D. Kan. Oct. 14, 2016); *see also* Second Superseding Indictment (ECF No. 89) (D. Kan. Mar. 16, 2017).

[25] *United States v. Allen, et al.*, No. 6:16-cr-10141, Criminal Complaint, at ¶¶ 13, 19 (ECF No. 1) (D. Kan. Oct. 14, 2016). The jury trial started on March 20, 2018.

The February 22, 2017 shooting of Srinivas Kuchibhotla, Alok Madasani, and Ian Grillot in Olathe, Kansas is the most horrifying example of the social categorization of Muslims as enemies of the American people.[26] Kuchibhotla and Madasani, two engineers at a local technology company, both Indian immigrants, had gathered with co-workers at a bar near their office to watch a local college basketball game. Also at that bar was Adam Purinton, who erroneously thought that both Kuchibhotla and Madasani were Iranians (one of the nationalities targeted by the Executive Order and its predecessors as barred from entry into the United States). Purinton approached and shot at Kuchibhotla and Madasani, telling them to "get out of our country!" Kuchibhotla was killed, and Madasani was wounded. Ian Grillot, a patrolman present at the scene, was wounded while attempting to intervene. Purinton fled across the state border into Missouri and told a bartender in a second bar that he needed to hide out because he had just shot two "Iranians."

Putting aside Purinton's stereotyped view that his victims were Iranians simply because they were foreign-born immigrants, his actions demonstrate the danger that social categorization can cause by exaggerating both the distance between in-groups ("real

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[26] Audra D. S. Burch, *Facing a Void Left by Hate*, N.Y. TIMES, July 9, 2017, at A1, A12-A13; Matt Stevens, *Justice Dept. Calls Killing in Kansas a Hate Crime*, N.Y. TIMES, June 10, 2017, at A18; John Eligon, et al., *Drinks at a Bar, Ethnic Insults, then Gunshots*, N.Y. TIMES, Feb. 25, 2017, A1, A17; *see also United States v. Purinton*, No. 2:17-cr-20028, Indictment (D. Kan. June 9, 2017).

Americans") and out-groups ("Iranians"), as well as the homogeneity of the out-group.[27] The travel ban against Muslims does just that.

In addition, a rash of arsons and vandalism at mosques occurred after the issuance of E.O. 13,769. On January 28, 2017, one day after the first Order, a fire destroyed the Islamic Center of Victoria, Texas.[28] On February 24, 2017, a blaze broke out at the Daarus Salaam Mosque near Tampa, Florida.[29] Combined with two arsons of mosques shortly before President Trump's inauguration, the United States has seen an unprecedented surge of hate crimes against the Muslim community.[30] During the twelve month period

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[27] Purinton recently pled guilty to state-court murder charges. John Eligon, *Man Pleads Guilty in Migrant's Murder*, N.Y. TIMES, March 7, 2018, at A-17. His federal case is set for trial on April 9, 2018. *See United States v. Purinton*, No. 2:17-cr-20028, Indictment (D. Kan. June 9, 2017).

[28] U.S. Attorney's Office, Southern District of Texas, *Victoria Man Charged with Hate Crime in Burning of Mosque* (June 22, 2017), https://www.justice.gov/usao-sdtx/pr/victoria-man-charged-hate-crime-burning-mosque; Anonymous, *Fire Destroys Texas Mosque in Early Hours*, N.Y. TIMES, Jan. 29, 2017, at A4; *see also United States v. Perez*, No. 6:17-cr-00035, Superseding Indictment (S.D. Tex. June 22, 2017).

[29] Tony Marrero, *Mosque Fire Deliberately Set*, TAMPA BAY TIMES, Feb. 25, 2017, at 1; Anonymous, *2nd Florida Mosque Hit by Arson in Past 6 Months*, ST. LOUIS POST-DISPATCH, Feb. 25, 2017, at A6.

[30] Albert Samaha & Talal Ansari, *Four Mosques Have Burned in Seven Weeks – Leaving Many Muslims and Advocates Stunned*, BUZZFEEDNEWS (Feb. 28, 2017), https://www.buzzfeed.com/albertsamaha/four-mosques-burn-as-2017-begins; Taylor Goldenstein,

immediately following the November 2016 election, there were 213 such hate incidents against Muslims and others from the Middle East and South Asia.[31]

Other recent attacks on mosques in the United States include an explosion at a mosque in Bloomington, Minnesota in August 2017.[32]

On March 3, 2017, a Sikh man was shot in his Kent, Washington driveway when a man approached him and said, "go back to your own country."[33]

It is undeniable that the public interest in this country is best served by tolerance of different religions as the Constitution requires, and tolerance of both foreign-born and American-born adherents of different religions. The public interest is not served by discriminatory stereotyping against Muslims that legitimizes or encourages discrimination and violence, or by a law which gives effect to private biases.

Blaze Completely Destroys Islamic Center's Building, AUSTIN AMERICAN-STATESMAN, Jan. 8, 2017, at B1.

[31] *See* COMMUNITIES ON FIRE, *supra* note 6, at 9 & App. A, at 34-59 (collecting 213 hate incidents).

[32] Nick Corasaniti, *Minnesota Mosque Shaken by an Early-Morning Blast*, N.Y. TIMES, Aug. 6, 2017, at A-19; Kurtis Lee, *U.S. Muslims on Edge after Bombing; The FBI Is Leading the Investigation into an Attack that Damaged a Minnesota Mosque*, L.A. TIMES, Aug. 6, 2017, at A-10.

[33] Ellen Barry, *U.S. and Indian Officials Condemn Shooting of Sikh*, N.Y. TIMES, Mar. 6, 2017, at A-9; Cleve R. Wootson, *Sikh Man, 39, Shot in Suspected Hate Crime*, WASH. POST, Mar. 5, 2017, at A-3.

The insidious effect of the Muslim ban does not impact only those persons seeking to enter the United States from the six designated countries. Instead, by promoting social stereotypes and priming individuals to act on those stereotypes, the ban creates fertile grounds for violence against all minorities. The Executive Order fundamentally threatens the American ideal of a diverse society working across divisions for the greater societal good.

The social categorization, discrimination, and stereotyping engendered by the travel ban will have an even more damaging effect on Muslim children, who are the target of over 25 percent of these hate incidents.[34] Just as the Court found in *Brown* – that segregation had a damaging effect on the self-worth and inclusion of African-American children, in violation of the Equal Protection Clause – the Proclamation (and its predecessor Executive Orders) will have a damaging effect on the self-worth of Muslim children and their feeling of inclusion in our society, in violation of the Establishment Clause.

3. Stereotyping and Discrimination Harms All Americans, Not Just Those Directly Affected by Specific Acts.

Social science research has consistently demonstrated that stereotyping of any group harms all individuals in that group, even those who are not directly affected by specific acts of violence or discrimination.

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[34] *See* COMMUNITIES ON FIRE, *supra* note 6, at 15.

Professor Jack McDevitt and several other researchers recognized that:

> Because bias crimes have the unique impact of reaching far beyond the primary victim, due to the dimension of victim interchangeability, every member of the minority group who is aware of the crime is affected by a solitary crime against one individual minority member.

Jack McDevitt et al., *Consequences for Victims: A Comparison of Bias- and Non-Bias-Motivated Assaults*, 45 AM. BEHAVIORAL SCIENTIST 697, 712 (2001).

Similarly, violent crimes on the basis of religious stereotypes, *i.e.*, against Muslims, have the same broader impact as do terrorist crimes:

> [T]errorism and violent hate crimes . . . have at least one basic characteristic in common: the violence inflicted on the victims is also aimed at a larger community . . . hate crimes directly target individual members of a social group but indirectly send a message of intolerance to the entire group. The victims of hate crimes are selected because of their symbolic value as representatives of the entire social group.

Jeffrey L. Thomas, SCAPEGOATING ISLAM: INTOLERANCE, SECURITY, AND THE AMERICAN MUSLIM 137 (2015).

Senator John McCain recently recognized this fundamental principle when he criticized several fellow members of Congress who had made *ad hominem*

attacks on a former government official due to that person's Muslim heritage:

> When anyone – not least a member of Congress – launches specious and degrading attacks against fellow Americans on the basis of nothing more than fear of who they are and ignorance of what they stand for, it defames the spirit of our Nation, and we all grow poorer because of it.

158 CONG. REC. S5106 (daily ed. July 18, 2012) (statement of Sen. John McCain).

As the court below recognized in finding that injunctive relief was in the public interest, the harms caused by the Executive Order are substantial:

> In assessing the public interest, we are reminded of Justice Murphy's wise words: "All residents of this nation are kin in some way by blood or culture to a foreign land." *Korematsu v. United States*, 323 U.S. 214, 242 (1944) (Murphy, J., dissenting). It cannot be in the public interest that a portion of this country be made to live in fear. We note, too, that the cited harms are extensive and extend beyond the community.

Pet. App. 60a (*Hawaii v. Trump*, 878 F.3d 662, 700 (9th Cir. 2017) (*per curiam*)).

Here, too, the latest Executive Order and the underlying statements by the President have only encouraged stereotyping of Muslims, which has

adversely affected all Muslims in the United States and has harmed our society as a whole.

CONCLUSION

For the foregoing reasons, and those set forth in the briefs of the Respondents, *Amici Curiae* respectfully request that this Court affirm the judgments of the lower courts enjoining the Executive Order.

Respectfully submitted on March 29, 2018,

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